

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Computer III Further Remand)

Proceedings: Bell Operating)

Company Provision of Enhanced)
Services)

CC Docket No. 95-20

1998 Biennial Regulatory Review --)

Review of Computer III and ONA)

Safeguards and Requirements)

CC Docket No. 98-10

**REPLY TO THE OPPOSITIONS OF BELL ATLANTIC AND SBC
COMMUNICATIONS INC. TO THE PETITION FOR RECONSIDERATION AND
CLARIFICATION**

The Commercial Internet eXchange Association ("CIX")¹ files this Reply to the Oppositions of Bell Atlantic and SBC on CIX's Petition for Reconsideration and Clarification of the Report and Order² ("Petition") in the above-captioned proceeding. CIX believes that it is essential that the Commission further clarify or reconsider, as necessary, aspects of the R&O to promote transparent use of RBOC broadband facilities for all Internet service providers ("ISPs").

In its Petition, CIX requested that the Commission establish that incumbent LECs

¹ The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

² FCC 99-36, 64 Fed. Reg. 14, 141 (Mar. 24, 1999) ("R&O").

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disclose in advance and via their web-sites the planned deployment of DSLAMs on a wire-center basis, and adequate prior notice on the status of line conditioning and line conditioning changes. Further, CIX requested that RBOCs be required to make their Comparably Efficient Interconnection (“CEI”) plans, both past and future, available on their web-sites, so that all competing ISPs have ready information available concerning interconnection with the RBOC’s “last mile” network. These disclosure obligations are intended to provide independent ISPs with adequate and timely network information in order to compete with incumbent LEC-affiliated ISPs. As the Commission has stated, “[f]reely available information concerning interconnection helps make vigorous competition possible, which ultimately benefits consumers.”³

In order to compete effectively, ISPs must have accurate and relevant information concerning the RBOC’s deployment of facilities and equipment used to offer underlying broadband telecommunications services, such as xDSL service. Ordering the RBOCs to provide notice and disclosure as set forth in the CIX Petition will reduce the ability of the ILECs to unfairly share valuable network deployment information with their affiliated ISP and will provide all ISPs with the requisite information for the deployment of high speed Internet services. Indeed, it is critical for the Commission to ensure transparency of RBOC xDSL offerings.

Neither Bell Atlantic nor SBC raise any significant arguments in opposition to disclosure requirements set forth in CIX’s Petition. In fact, SBC already posts on its web-site information

³

R&O at ¶5

on wire center deployment of DSL service.⁴ Posting such valuable information merely requires that an ILEC move a file onto a Web server.

Discussion

Neither Bell Atlantic nor SBC raise any legal, operational, or policy justifications in opposition to CIX's Petition. Instead, Bell Atlantic and SBC simply oppose the Petition as a matter of course in their ongoing efforts to extend their existing local service monopolies into the Internet arena. CIX finds Bell Atlantic's opposition particularly meritless. Bell Atlantic incorrectly suggests that CIX's request is actually *inconsistent* with the Commission's objective of encouraging rapid and widespread deployment of broadband services. Bell Atlantic argues that CIX's suggested disclosure requirements will have the effect of delaying the deployment of DSL services. Nothing could be farther from truth. As discussed below, the disclosure requirements set forth in CIX's Petition will actually *reduce* time delays in the competitive provisioning of high speed Internet services.

I. Access to Reliable Information on ILEC Roll-Out Schedules is Critical for ISPs' Ability to Rapidly Offer High Speed Internet Services Utilizing the ILEC's DSL Offerings.

In its Petition, CIX asked the Commission to clarify that ILECs have an obligation to provide ISPs with adequate information on ILEC DSLAM deployment and line conditioning in advance of the incumbent's actual service deployment. Bell Atlantic argues that providing such notice would require that the Bell Companies delay their service offerings for 6-12 months.

⁴ Opposition of SBC at 1.

Nowhere in the Commission's regulations is there a requirement that Bell Companies must *delay deployment* of new services in order to satisfy their disclosure obligations. Nor is that the intent of the notice requirements.

Timing for the provision of notice by the ILECs is determined by the "make/buy" point, which is defined as:

The time at which an incumbent LEC decides to make for itself, or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If an incumbent LEC's planned changes do not require it to make or to procure a product, then the make/buy point is the point at which the incumbent LEC makes a definite decision to implement a network change.⁵

The amount of notice required is based on the make/buy date and dependent upon how long it will take the ILEC to implement the changes. The Commission's rules provide three alternatives for providing notice: 12 month notice, sixth month notice, and notice of less than six months. Each notice period has its own corresponding requirements, none however, provides that an ILEC must *delay* the deployment of new services.⁶

II. The Disclosure Requirements Set Forth In CIX's Petition Will Reduce the Ability of the ILECs to Favor Their Affiliated ISPs.

It is difficult to understand why Bell Atlantic or SBC would oppose a simple disclosure requirement, unless they have determined that withholding such information will be beneficial to their companies. CIX questions whether their oppositions are based on their desire to share such information solely with their affiliated ISP. Competition may be stifled if information is

⁵ 47 C.F.R. § 51.331.

⁶ Id.

discriminatorily shared with the ILEC affiliated ISP, providing such ISPs with a competitive advantage in deployment of broadband Internet services. Such unfair advantages could prevent the development of robust competition in the high speed Internet market.

Additionally, one could reasonably conclude that it would actually be to the ILECs' advantage to post DSLAM deployment information, loop-conditioning status, and CEI plans. Such disclosure could only have the effect of increasing demand for the BOC DSL offerings. In fact, ISPs are actually marketing the hybrid DSL/Internet offerings, in effect selling BOC DSL services for them.

Bell Atlantic also attempts to minimize the significance of DSLAMs to the provisioning of DSL services, claiming that DSLAMs are "simply items of central office equipment"⁷ and thus the network disclosure rules are inapplicable. ISPs, in fact, must plan for broadband service deployment through their procurement of necessary Frame Relay or ATM interconnection that they may obtain from the incumbent LEC's network. In addition, in order for ISPs to plan for their high speed Internet offerings to be available at the same time that the ILEC DSL offerings become available, the transparency of the ILEC deployment schedules is essential.

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Opposition of Bell Atlantic at 3.

III. All ILEC CEI Plans Should be Posted on the Internet.

In their oppositions, both Bell Atlantic and SBC object to posting previously approved CEI plans on the Internet. As stated in the CIX Petition, it is important to ISPs that all CEI plans be available via the RBOC's web-sites, including those previously filed. SBC suggests that "[t]he fact that CIX may not have participated in the Commission's CEI plan proceedings, does not justify requiring SBC and the other BOCs to incur the cost and burden of posting the old plans and amendments . . ."⁸ CIX did in fact participate in the Commission's CEI proceedings, however, fails to understand the significance of this to the issue at hand. It is CIX's membership and the entire ISP industry that will benefit from the posting of the past CEI plans. Moreover, the cost of posting CEI plans on the Internet is negligible.

Conclusion

For the reasons set forth in the Petition for Reconsideration and Clarification and the response to the Oppositions stated above, the Commission should clarify or reconsider the R&O to allow competing ISPs to better use the ILECs' emerging broadband telecommunications services. The timely and accurate provision of information on the ILECs' DSLAM deployment, line conditioning, and CEI plans are essential to achieving competition in the arena of advanced

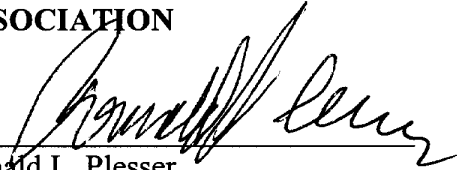
⁸

Opposition of SBC at 2.

services and thus should be explicitly included in the Commission's Computer Inquiry framework.

Respectfully submitted,

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July 22, 1999

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CERTIFICATE OF SERVICE

I, Sharon P. Jefferson, a secretary at the law firm of Piper & Marbury L.L.P., hereby certify that a true and correct copy of the Reply to the Oppositions of Bell Atlantic and SBC Communications Inc. to the Petition for Reconsideration and Clarification was sent via first class, postage prepaid mail to the following individuals, this 22nd day of July, 1999.

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